

**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HQ07MH-67338**

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|----------------------|---|----------------------------------|
| ██████████, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Administrative Action |
| |) | FINDING OF PROBABLE CAUSE |
| Frank Ciufia, |) | |
| |) | |
| Respondent. |) | |

On February 28, 2019, Ocean County resident, ██████████ (Complainant), filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that on or about February 8, 2019, Frank Ciufia (Respondent) refused to rent her an available apartment because of her minor child's disabilities in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied Complainant's allegations of discrimination in their entirety. DCR's ensuing investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent owns a three-family single story building in Toms River which he uses as a rental property. In January 2019, Respondent began seeking a tenant for the middle apartment.

Complainant has a two-year-old son with various disabilities for which he is receiving early intervention therapy. Complainant has received Temporary Rental Assistance (TRA) and other services through the Ocean County Board of Social Services.

Complainant saw the subject apartment advertised on the website craigslist.com. Complainant alleges that on or about February 5, 2019, she met Respondent at the property and he gave her a tour of the available apartment. Complainant was accompanied by her son and told Respondent her son had special needs. Complainant stated she also told Respondent she was interested in renting the apartment. On or about February 8, 2019, Respondent left Complainant a voicemail stating he could not rent her the apartment because of her son's special needs.

During the investigation, Complainant gave DCR a copy of the voicemail in which Respondent stated as follows:

Hey ██████████ this is Frank and I should have called you a little earlier, but I just kinda made a decision now and I've got, I don't think I can rent that place to you if you have someone with special needs and stuff like that. It is a pretty quiet building and the person who would

be right on the other side of the wall, it is bedroom to bedroom with the other tenant and I don't think that would work out. I'm sorry to tell you that and I do appreciate you being honest with me but I just want to be honest with you as well. So you can give me a call if you want but like I said, it is not going to work out with someone with special needs as your son so you can call me if you'd like to and I appreciate your honesty. Thank you.

In his response to the complaint, Respondent denied refusing to rent the apartment to Complainant because of her son's disabilities. Respondent said that he did not rent the apartment to Complainant because she was not yet qualified for the rental assistance and he had two other applicants who were immediately ready to occupy the apartment. Respondent also said that Complainant told him during a telephone call that her son "screams all day and all night." Respondent said the bedrooms in the subject apartment share a common wall with the bedrooms of the adjacent apartment and any "loud noises, such as screaming, in the bedrooms of either apartment would certainly disturb someone trying to sleep in the other apartment."

During an interview with Respondent, the DCR investigator played the voicemail Complainant provided and Respondent admitted it was his voice in the message. Respondent also refused to provide DCR with other rental applications and the lease agreement for the successful applicant, despite repeated requests. Respondent told the investigator he spoke to Complainant's TRA caseworker, [REDACTED], who told him Complainant had not yet qualified for TRA.

The DCR investigator called the Ocean County Board of Social Services and interviewed [REDACTED]. [REDACTED] denied having had a conversation with Respondent about Complainant. [REDACTED] said he has spoken to Respondent in the past because Respondent had rented to other clients with TRA. [REDACTED] said Complainant was qualified for TRA and would have been able to use it for the subject apartment had Respondent entered into a lease agreement with Complainant. [REDACTED] said the agency would have paid Complainant's security deposit.

Complainant denied that she told Respondent that her son screams all day and all night. Complainant stated she told Respondent her son has autism and is not verbal. She also told Respondent her son sometimes yells when he needs something. Complainant told the investigator that she is a tenant in good standing in her present apartment and was hoping to move into the subject apartment because she does not drive and it would more convenient to her son's therapist.

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency

order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

It is unlawful discrimination for any person to refuse to rent any real property because of a prospective tenant’s disability. See N.J.S.A. 10:5-12(g)(1); see also 42 U.S.C.A. 3604(f)(1)(B). The LAD definition of disability includes “developmental disability, including autism spectrum disorders.” See N.J.S.A. 10:5-5(q).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant because of her son’s disability. Complainant saw the unit advertised, contacted Respondent, toured the unit, and indicated to Respondent that she wanted to rent the unit. Complainant also told Respondent her son has a disability. Several days later, Respondent left Complainant a voicemail stating in part, “I don’t think I can rent that place to you if you have someone with special needs.” Respondent’s voicemail makes clear he knew Complainant’s son has a disability and that was the reason for his refusal to rent to Complainant.

During the DCR investigation, Respondent stated he did not rent the unit to Complainant because Complainant’s caseworker told him that Complainant did not qualify for rental assistance. However, Complainant’s caseworker contradicted Respondent’s account and stated she never spoke to Respondent. The caseworker also stated Complainant was qualified to rent the unit. There is no other evidence supporting Respondent’s version of events, and Respondent refused to provide documents requested by DCR during the course of the investigation.

Based on the investigation, there is PROBABLE CAUSE to credit Complainant’s allegations of disability discrimination and the matter should proceed to a hearing on the merits.

A handwritten signature in blue ink that reads "Rachel Wainer Apter". The signature is fluid and cursive, with a stylized "A" at the end.

Rachel Wainer Apter, Director
NJ Division on Civil Rights

DATE: July 9, 2019